IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 34/2003
(Naresh Kumar & Anr. Vs. State of Rajasthan)

Date of Order : 12/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 13.12.2002 passed by Chief Judicial Magistrate, Chittorgarh (for short 'the trial court' hereinafter) whereby the trial court directed to try the case as warrant trial.

I have heard learned counsel for the petitioner and public prosecutor for the State. Carefully gone through the order impugned.

On an application moved by Additional Public Prosecutor requesting the trial court to try the case as warrant case instead of summary case, the trial court ordered that the case may be tried as a warrant case.

On careful perusal of the order impugned, it no where appears that the trial court was of the opinion that the

case is of such a nature that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily. The Magistrate has not recorded any reasons in the order impugned.

It is contended by learned counsel for the petitioners that the offence is to be tried summarily as envisaged under Section 16-A of the Prevention of Food Adulteration Act, 1954 (for short 'the Act' hereinafter). Section 16-A of the Act reads as under :-

> "16-A. Power of Court to try cases summarily.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:
>
> Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:
>
> Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence or imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

Thus from the proviso to Section 16-A of the Act it is

clear that at the commencement of the trial or in the course of summary trial if it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or it is for any other reason undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect.

In the instant case, neither the Magistrate was of the opinion that the case is of such a nature that a sentence exceeding one year term may have to be passed or that for any other reason it is undesirable to try the case summarily and therefore, in my view, the order impugned does not fulfill the requirement of proviso to Section 16-A of the Act and therefore, cannot be sustained.

In the result, the petition is allowed. The order impugned dated 13.12.2002 passed by the Chief Judicial Magistrate, Chittorgarh is set aside. Stay petition also stands disposed of. The record of the trial court be returned forthwith.

(H.R.PANWAR),J.

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